

**REQUEST FOR COMMENTS
CONCERNING PROPOSED INITIAL ORDER IN CHAPTER 13 CASES**

I am considering issuing an initial order in chapter 13 cases assigned to Division H-2 of the United States Bankruptcy Court for the Southern District of Texas. The procedure is intended to make processing chapter 13 cases more efficient and effective as well as less expensive to both debtors and creditors. If you have any comments concerning the proposal, please send your comments in writing, not later than November 30, 2003, to:

Bankruptcy Judge Wesley Steen
515 Rusk
Houston, Texas 777002

NOTE THAT THIS PROCEDURE IS NOT YET EFFECTIVE.

The court will consider comments from the bar and will begin to issue the initial order (or not) about January 1, 2004. If the proposal is instituted, announcements will be made to the bar association and on this web page. Of course, debtor's counsel and debtors will be notified by entry of the order.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
DIVISION

IN RE:

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CASE NO.

INITIAL ORDER FOR PROSECUTION OF CHAPTER 13 CASE

THIS IS A CASE MANAGEMENT ORDER ISSUED UNDER AUTHORITY OF BANKRUPTCY CODE § 105(a). FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN DISMISSAL OF THIS CASE, POSSIBLY WITH PREJUDICE TO THE DEBTOR(S) FILING ANOTHER BANKRUPTCY CASE. NOTE THAT UNDER AUTHORITY OF BANKRUPTCY LOCAL RULE (BLR) 1001(d), THE PROVISIONS OF THIS ORDER SUPERCEDE THE BLR TO THE EXTENT THAT THERE MAY BE A CONFLICT. IN ALL CASES, IF NO PARTY REQUESTS A HEARING, THE COURT MAY DISMISS A CASE WITHOUT AN ACTUAL HEARING AS PROVIDED BY BANKRUPTCY CODE § 102(1).

1. Payment of the Filing Fee.

- a. The Debtor(s) shall pay the filing fee with the petition or promptly on the due date provided in an order allowing installment payments.
- b. If the filing fee or any installment is not timely paid, the Clerk shall issue a notice of pending dismissal of the case for failure to pay filing fees. The notice of pending dismissal shall be served on the Debtor(s), Debtor(s)'s counsel and the chapter 13 Trustee.
- c. If the Debtor(s) do not pay the filing fee or request a hearing within ten (10) days after the notice is served, the case may be dismissed forthwith.

2. Filing the List of Creditors, Schedule of Assets and Liabilities, etc.

- a. The list of creditors (with addresses) must be filed with the petition in the format prescribed by the Clerk unless a motion for extension of time under Rule 1007(a)(4) is filed with the petition.
- b. A motion for extension of time to file the list of creditors or bankruptcy schedules need be served only on the chapter 13 Trustee and on the U.S. Trustee.
- c. If the U.S. Trustee files a motion to dismiss under Bankruptcy Code § 1307(c)(9) or (10), or if the chapter 13 Trustee files a motion to dismiss for delay prejudicial to creditors and the basis of that motion is that the Debtor(s) failed to file the information required in Bankruptcy Code § 521, the motion need not be served on any party except the Debtor(s) and, if the Debtor(s) are represented by counsel, on Debtor(s)'s counsel.
- d. If either the U.S. Trustee or the chapter 13 Trustee files a motion to dismiss under subparagraph (c) above, the motion need not include BLR 9013 language but shall include the following notice:

If the Debtor(s) request a hearing, the Debtor(s) and counsel must attend the hearing. If no party has requested a hearing within (ten) 10 days after the date that the motion was served, the United States Trustee or the chapter 13 Trustee may file a certificate of non-compliance and the Court may dismiss this case without actually conducting a hearing.

3. The Debtor(s) Shall Prosecute the Case Effectively and Expeditiously.

- a. The Debtor(s) shall comply with all deadlines established in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (FRBP), unless an extension is obtained.
- b. Published studies have concluded that debtors are more successful in chapter 13 cases if payments are made to the chapter 13 Trustee by wage withholding or by electronic funds transfer. Therefore the Debtor(s) shall file a request for entry of an order for payments to be made to the chapter 13 Trustee by wage withholding or by electronic funds transfer (EFT) ("Wage Order"). If the Debtor(s) believe that this requirement is not appropriate, they must either (i) obtain the written waiver of this requirement from the chapter 13 Trustee (and file the agreement with the court), or (ii) file a motion with the Court for waiver of this requirement. The Debtor's request for a Wage Order or for waiver of a Wage Order must be filed not later than (i) fifteen (15) days after the bankruptcy case is filed or (ii) when the schedules are timely filed.
- c. Unless the chapter 13 Trustee or the Court grants an exception from the requirement for a Wage Order, the Debtor(s) shall make sure that the Wage Order is kept in force throughout the case. New Wage Orders are required on change of employment or other changes in circumstances.
- d. One of the principal factors delaying confirmation of chapter 13 cases has been debtors' failure to file tax returns and the consequent inability to determine tax liabilities that are allowed priority claims. Therefore, within sixty (60) days after the date that the petition is filed, the Debtor(s) shall file any delinquent federal or state tax returns for periods that might generate an allowed priority claim under 11 U.S.C. § 507. The returns shall be filed with the appropriate federal or state taxing authority, not the chapter 13 Trustee. Contemporaneously with filing federal tax returns, the Debtor(s) shall provide copies to the Internal Revenue Service Insolvency Section. The address can be found on the Court's website, www.txs.uscourts.gov.
- e. Chapter 13 cases must be effectively prosecuted. If the chapter 13 plan has not been confirmed within 180 days after the case was filed, Debtor(s) must appear at any hearing after that date on pre-confirmation motions to dismiss and plan confirmation. The Debtor(s) must testify concerning whether the delay in confirming the chapter 13 plan is unreasonable delay prejudicial to creditors.

4. Interim Disbursements by the Chapter 13 Trustee.

- a. Delayed distributions to secured creditors result in substantial litigation and expense both to debtors and to creditors when secured creditors file motions for adequate protection and for relief from the automatic stay. To promote successful confirmation and consummation of chapter 13 plans, to provide additional adequate protection to secured creditors, and to evidence the Debtor(s)'s good faith and intention to complete the case, the Debtor(s) shall request an Order Authorizing Interim Disbursements. If such an order is inappropriate in this case, the Debtor(s) shall file a motion for a waiver of interim disbursements. Forms for both are available from the chapter 13 Trustee. The Debtors(s)'s request for an order authorizing interim disbursements or for waiver must be filed not later than (i) 15 days after the bankruptcy case is filed or (ii) when the schedules are timely filed.
- b. If the Debtor(s) request interim disbursements and the Court issues the order, the chapter 13 Trustee will begin disbursements to secured and priority creditors as soon as practicable after the first date set for the meeting of creditors.
- c. Pre-confirmation disbursements to priority and secured creditors other than Debtor(s)'s attorney and the chapter 13 Trustee will be authorized only upon all of the following conditions being met:
 - i. A timely proof of secured claim or priority claim must be filed by or on behalf of the claimant;

- ii. The claim as filed must agree with the classification as proposed in the Debtor(s)'s Plan; and
 - iii. If there is a difference between the amount claimed and the amount proposed in the Debtors(s)'s Plan, the Chapter 13 Trustee shall base interim disbursements on the lesser amount.
 - d. Interim distributions shall be distributed as follows:
 - i. The Chapter 13 Trustee's percentage fee, to the extent authorized by the United States Trustee, under 18 U.S.C. § 586(e);
 - ii. Attorney's fees not to exceed 50% of the payment and not to exceed \$1,000; and
 - iii. The remainder pro-rata to secured claims.
5. **Chapter 13 Trustee's Enforcement of Initial Order for Prosecution ("Initial Order").** If the Debtor(s) fail to comply with the requirements of this Initial Order, or if the Debtor(s) fail to make payments as required by law or by the Debtors(s)'s Plan, the chapter 13 Trustee shall promptly file (and give appropriate notice of) a Motion to Dismiss.
6. **Post-Confirmation Motions to Dismiss for Failure to Make Payments Required by the Plan.**
- a. With respect to the first post-confirmation Motion to Dismiss for failure to make plan payments, if the Debtor(s) cure the deficiencies prior to the hearing, the chapter 13 Trustee may withdraw the Motion to Dismiss prior to the hearing.
 - b. With respect to any subsequent Motion to Dismiss for failure to make plan payments, the chapter 13 Trustee may not withdraw the motion prior to the hearing. The Debtor(s) must appear at the hearing to demonstrate, by a preponderance of evidence, that the Debtor(s) Plan is feasible and must show cause for the Court to excuse multiple delinquencies.
7. **Debtor(s)'s Appearance and Testimony at Hearing on Motion to Modify.** If the Debtor(s) file more than one motion to modify a confirmed chapter 13 plan, the Debtor(s) must appear at the hearing on the second (and any subsequent) motion(s) to modify and present testimony and/or other evidence sufficient to satisfy the statutory requirements for plan modification.

THIS ORDER IS EFFECTIVE, IN EACH CASE, ON THE DATE THE ORDER IS ENTERED IN THAT CASE.

WESLEY W. STEEN
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall notice:

Debtor(s)

Debtor(s)'s counsel